

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Madeleine Matz	Team: Squad #12	CCRB Case #: 202304926	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 06/02/2023 5:44 AM	Location of Incident: 138th Place and Archer Avenue in Queens	18 Mo. SOL 12/2/2024	Precinct: 103		
Date/Time CV Reported Fri, 06/02/2023 8:35 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Fri, 06/02/2023 8:35 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. DT3 Edwin Montanez	05149	955530	NARCBQS
2. DT3 Nandpaul Persaud	05930	953247	NARCBQS

Officer(s)	Allegation	Investigator Recommendation
A . DT3 Edwin Montanez	Abuse: Detective Edwin Montanez stopped the vehicle in which § 87(2)(b) was an occupant.	
B . DT3 Nandpaul Persaud	Abuse: Detective Nandpaul Persaud stopped the vehicle in which § 87(2)(b) was an occupant.	
C . DT3 Edwin Montanez	Force: Detective Edwin Montanez pointed his gun at § 87(2)(b)	
D . DT3 Edwin Montanez	Abuse: Detective Edwin Montanez frisked § 87(2)(b)	
E . DT3 Nandpaul Persaud	Abuse: Detective Nandpaul Persaud frisked § 87(2)(b)	
F . DT3 Edwin Montanez	Abuse: Detective Edwin Montanez searched § 87(2)(b)	
G . DT3 Nandpaul Persaud	Abuse: Detective Nandpaul Persaud searched § 87(2)(b)	
H . DT3 Nandpaul Persaud	Abuse: Detective Nandpaul Persaud threatened to arrest § 87(2)(b)	
I . DT3 Edwin Montanez	Abuse: Detective Edwin Montanez failed to provide § 87(2)(b) with a business card.	
J . DT3 Nandpaul Persaud	Abuse: Detective Nandpaul Persaud failed to provide § 87(2)(b) with a business card.	
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		

Case Summary

§ 87(2)(b) submitted this complaint via the CCRB's website on June 2, 2023 (BR 01).

At approximately 5:44 AM on June 2, 2023, § 87(2)(b) was riding an electric Citi Bike in the vicinity of 138th Street and Archer Avenue in Queens when Det. Edwin Montanez and Det. Nandpaol Persaud of Narcotics Bureau Queen South stopped him (**Allegations A and B: Abuse of Authority**, § 87(2)(g)). § 87(2)(b) ran from Det. Persaud and Det. Montanez, and Det. Montanez followed him in a vehicle. Det. Montanez then drew his gun and pointed it at § 87(2)(b) (**Allegation C: Force**, § 87(2)(g)). Det. Montanez and Det. Persaud frisked § 87(2)(b) (**Allegations D and E: Abuse of Authority**, § 87(2)(g)). Det. Montanez reached into § 87(2)(b) pockets (**Allegation F: Abuse of Authority**, § 87(2)(g)). Det. Persaud also allegedly reached into § 87(2)(b) pockets (**Allegation G: Abuse of Authority**, § 87(2)(g)). Det. Persaud allegedly told § 87(2)(b) that if he again rode his bike in the vicinity of Archer Avenue, he would be arrested (**Allegation H: Abuse of Authority**, § 87(2)(g)). Det. Montanez and Det. Persaud did not provide § 87(2)(b) with business cards (**Allegations I and J: Abuse of Authority**, § 87(2)(g)).

§ 87(2)(g), § 87(4-b)

The investigation received negative results for body-worn camera (BWC) videos associated with this incident (BR 02). The investigation obtained surveillance video of this incident from a Con-Edison facility located at 91-27 Van Wyck Expressway in Queens (BR 03), summarized in IA #129 (BR 04).

Findings and Recommendations

Allegation (A) Abuse of Authority: Detective Edwin Montanez stopped § 87(2)(b)
Allegation (B) Abuse of Authority: Detective Nandpaol Persaud stopped § 87(2)(b)

It is undisputed that Det. Montanez and Det. Persaud stopped § 87(2)(b)

§ 87(2)(b) provided a statement to the CCRB on June 5, 2023 (BR 04). § 87(2)(b) stated that he was riding a bicycle westbound on Archer Avenue on the sidewalk for an unknown number of blocks before he rode off of the sidewalk and then rode in the street for approximately two blocks. He then reached the intersection of Archer Avenue and 138th Place, where an unmarked vehicle pulled in front of his bicycle. Det. Montanez and Det. Persaud exited the vehicle and approached § 87(2)(b). Both detectives were in plainclothes. § 87(2)(b) stated that neither Det. Montanez nor Det. Persaud identified themselves as police or gave him any instructions. § 87(2)(b) ran from Det. Montanez and Det. Persaud because he did not know that the men were police officers.

Surveillance video from a Con Edison facility, capturing the corner of 138th Place and Archer Avenue (BR 05), shows § 87(2)(b) on a silver Citi Bike, riding on the sidewalk into frame at timestamp 00:10. At timestamp 00:12, a silver Hyundai SUV pulls in front of § 87(2)(b) who drops his bicycle. Det. Persaud and Det. Montanez exit the SUV and § 87(2)(b) runs away from them. Det. Montanez and Det. Persaud pursue § 87(2)(b) on foot, exiting the frame at 00:17.

Det. Montanez provided a statement to the CCRB on August 30, 2023 (BR 06). He stated that § 87(2)(b) was riding his bicycle on the sidewalk along Archer Avenue for several blocks. Det. Montanez observed several pedestrians move quickly to get out of § 87(2)(b) way. Det. Montanez decided to stop § 87(2)(b) for riding a bicycle on the sidewalk and to tell him to ride in the street. Det. Montanez used his vehicle's loudspeaker to tell § 87(2)(b) "Stop. Police," three or four times. § 87(2)(b) did not stop, and Det. Montanez then pulled in front of him. § 87(2)(b) stopped riding, and Det. Montanez verbally instructed him to stop. § 87(2)(b) said nothing and then ran from Det. Montanez and Det. Persaud.

Det. Persaud provided a statement to the CCRB on September 27, 2023 (BR 07). Det. Persaud's statement was generally consistent with Det. Montanez's statement.

New York City Administrative Code 19-176 (BR 08) states that no person shall ride a bicycle upon any sidewalk. If the manner in which the person rides on the sidewalk endangers persons or property, doing so is a misdemeanor.

NYPD Patrol Guide Procedure 209-01 (Summonses; Conditions of Service) (BR 27) states that officers may issue summonses for violations of the NYC Administrative Code.

People v. De Bour, 40 N.Y.2d 210 (1976) (BR 09) states that officers may stop an individual when they have a reasonable basis to believe that the individual has committed a misdemeanor or felony.

Video shows that § 87(2)(b) was riding his bike on the sidewalk. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (C) Force: Detective Edwin Montanez pointed his gun at § 87(2)(b)

It is undisputed that Det. Montanez pointed a gun at § 87(2)(b)

§ 87(2)(b) stated that he ran westbound on Archer Avenue for approximately two blocks before turning right onto Van Wyck Expressway. He then ran approximately half a block northbound on Van Wyck Expressway, in the roadway. Det. Montanez, who had apparently driven around the block in the opposite direction, appeared in front of § 87(2)(b) driving southbound on Van Wyck Expressway. Det. Montanez exited his vehicle and said to § 87(2)(b) "Stop. Police," or, "Police. On the ground now." As Det. Montanez issued commands, he pointed his gun at an unspecified part of § 87(2)(b) body for several seconds. § 87(2)(b) went down to his knees, at which point Det. Montanez approached him and then physically guided him to a nearby sidewalk.

At timestamp 00:15 in surveillance video capturing Archer Avenue just south of 138th Street (BR 11), § 87(2)(b) is visible running from Det. Persaud. At timestamp 00:24, § 87(2)(b) holds onto the right side of his waistband with his right hand for approximately one second. § 87(2)(b) then exits the video frame. At 00:28, Det. Persaud, on foot, waves at Det. Montanez, who is in the officers' vehicle. Det. Persaud then runs after § 87(2)(b) and exits the video frame.

At timestamp 00:26 in surveillance video capturing Van Wyck Expressway (BR 10), § 87(2)(b) is visible running across Van Wyck Expressway and again holds onto the right side of his

waistband for approximately one second. At timestamp 00:31, § 87(2)(b) holds both of his hands in front of him and then walks toward a sidewalk. At timestamp 00:34, Det. Montanez enters the frame, holding his gun and pointing it at § 87(2)(b) upper body. § 87(2)(b) kneels on the ground with his hands raised and his palms facing Det. Montanez. At timestamp 00:39, Det. Montanez approaches § 87(2)(b) and holsters his weapon. Det. Montanez then takes hold of § 87(2)(b) right arm and guides him onto the sidewalk and toward a wall.

Det. Montanez (BR 06) stated that when § 87(2)(b) ran from the officers, it raised Det. Montanez's degree of suspicion about § 87(2)(b) had not said or done anything before running that indicated to Det. Montanez that § 87(2)(b) posed a threat. Then, as § 87(2)(b) ran, Det. Montanez observed that § 87(2)(b) held onto the right side of his waistband in a manner that indicated to Det. Montanez, based on his experience, that § 87(2)(b) might have a gun in his waistband. Additionally, Det. Persaud used point-to-point radio to inform Det. Montanez that § 87(2)(b) might be armed. Det. Montanez did not recall whether he observed any bulge in the area § 87(2)(b) held or if his pants appeared to be weighed down by any object. Det. Montanez stated that the only reason he believed that § 87(2)(b) might be armed was the manner in which he held his waistband as he ran. Det. Montanez then drove around the block, pulled in front of § 87(2)(b) and exited his vehicle approximately 10 feet from § 87(2)(b). Det. Montanez then drew his gun and pointed it at § 87(2)(b). Det. Montanez stated that he pointed his gun at § 87(2)(b) because he was concerned that § 87(2)(b) might be armed because of the manner in which he held his waistband, and for no other reason.

Det. Persaud (BR 07) did not recall if he observed in real time that § 87(2)(b) held onto his waistband or if he believed at that time that § 87(2)(b) was armed. Det. Persaud did not recall if he used his point-to-point radio to inform Det. Montanez that he saw § 87(2)(b) holding onto his waistband. Det. Persaud did not recall seeing any bulges on § 87(2)(b) person. However, Det. Persaud believed, after reviewing the above-detailed video, that the manner in which § 87(2)(b) held his waistband in the video indicated to him retrospectively that § 87(2)(b) may have been armed.

The ruling in *People v. Riddick*, 894 N.Y.S.2d 260 (2010) (BR 12) states that a civilian running from officers and reaching for their waistband, without a visible outline of a gun, the click of a magazine, or other specific evidence indicating the presence of a weapon, does not furnish officers with reasonable suspicion that the individual is armed.

NYPD Patrol Guide Procedure 221-01 (BR 13) states that officers must have an articulable belief that the potential for serious physical injury is present before drawing their firearm.

§ 87(2)(g)
[REDACTED]

Allegation (D) Abuse of Authority: Detective Edwin Montanez frisked § 87(2)(b)

Allegation (E) Abuse of Authority: Detective Nandpaul Persaud frisked § 87(2)(b)

Allegation (F) Abuse of Authority: Detective Edwin Montanez searched § 87(2)(b)

Allegation (G) Abuse of Authority: Detective Nandpaul Persaud searched § 87(2)(b)

It is undisputed that Det. Montanez and Det. Persaud frisked § 87(2)(b) and that Det. Montanez reached into § 87(2)(b) pants pocket.

§ 87(2)(b) stated that after Det. Persaud and Det. Montanez approached him on Van Wyck Expressway, Det. Montanez escorted him to the sidewalk where both detectives patted down his abdomen, pants pockets, and legs. Det. Persaud and Det. Montanez then reached into § 87(2)(b) front pants pockets and removed § 87(2)(b) phone, keys, identification, and a small container of pepper spray, before returning all of these items to him.

At timestamp 00:42 in surveillance video capturing Van Wyck Expressway (BR 10), Det. Montanez helps § 87(2)(b) up from his kneeling position by his right arm and escorts him to a nearby wall. § 87(2)(b) places both hands on the wall and turns his upper body around toward Det. Montanez. Det. Montanez reaches for § 87(2)(b) right hip area, apparently reaching into § 87(2)(b) right pants pocket. At timestamp 1:00, § 87(2)(b) turns to face the wall. Det. Montanez reaches into § 87(2)(b) left pants pocket. Det. Montanez removes something from the pocket and inspects it. § 87(2)(b) and Det. Montanez appear to speak to one another, and at timestamp 1:25, § 87(2)(b) moves away from the wall and faces Det. Persaud and Det. Montanez. At 1:47, § 87(2)(b) reaches into his right pants pocket and removes a small object. At 2:04, Det. Montanez, his back to the camera, appears to again reach toward § 87(2)(b) right pocket. At timestamp 2:27, Det. Montanez, Det. Persaud, and § 87(2)(b) walk out of frame while apparently speaking to one another.

Det. Montanez (BR 06) stated that after he pointed his gun at § 87(2)(b) held his hands up. Det. Montanez approached, holstered his gun, and then guided § 87(2)(b) arms behind him. Det. Montanez stated that upon approaching § 87(2)(b) and guiding his hands behind his back, he was no longer concerned that § 87(2)(b) was armed. Det. Montanez stated that he did not place § 87(2)(b) in handcuffs because § 87(2)(b) was at this point, “very compliant,” and Det. Montanez felt he had control of the situation. Det. Montanez then moved § 87(2)(b) to a nearby wall and frisked § 87(2)(b) waistband for a possible weapon, in order to ensure that no weapon was present. Det. Montanez did not recall specifically what he felt during the frisk but stated that after the frisk he was certain that § 87(2)(b) was not armed. Det. Montanez then asked § 87(2)(b) for his identification. § 87(2)(b) stated that his identification was in one of his pants pockets. Det. Montanez reached into one of § 87(2)(b) pockets and removed his identification. Det. Montanez stated that he reached into § 87(2)(b) pocket to remove his identification and for no other reason. Det. Montanez stated that § 87(2)(b) was not allowed to reach into his pocket at this time because § 87(2)(b) had not been searched and therefore he might still have been armed. (Det. Montanez did not account for the discrepancy between his earlier statement about the result of the frisk and his reported concern that, even after the frisk, § 87(2)(b) might have been armed.) Det. Montanez stated that he did not remove anything from § 87(2)(b) pockets other than his identification.

Det. Persaud (BR 07) stated that he did not recall if he believed that § 87(2)(b) was armed when Det. Persaud approached § 87(2)(b) near the wall on Van Wyck Expressway, but stated that it is policy to frisk someone if he has any belief they may be armed. Det. Persaud stated that he and Det. Montanez then both frisked § 87(2)(b) waistband and that during the frisk, Det. Persaud did not

feel anything notable. He did not believe, based on the frisk, that § 87(2)(b) was armed and therefore did not believe that § 87(2)(b) was a threat. Det. Persaud did not recall if he reached into any of § 87(2)(b) pockets.

According to *People v. De Bour*, 40 N.Y.2d 210 (1976) (BR 09) states that officers may conduct a frisk when they reasonably suspect that a person is armed.

The ruling in *People v. Riddick*, 894 N.Y.S.2d 260 (2010) (BR 12) states that a civilian running from officers and reaching for their waistband, without a visible outline of a gun, the click of a magazine, or other specific evidence indicating the presence of a weapon, does not furnish officers with reasonable suspicion that the individual is armed.

People v. Williams, 629 N.Y.S.2d 207 (1995) (BR 14) states that if after frisking a pocket, an officer does not feel anything that they believe could be a weapon, they cannot search that pocket.

Det. Montanez stated that that once he successfully stopped § 87(2)(b) he no longer believed § 87(2)(b) was armed. § 87(2)(g)

Det. Montanez confirmed that he reached into § 87(2)(b) pocket and stated that he did so to remove § 87(2)(b) identification, after having frisked § 87(2)(b) for weapons to negative results. § 87(2)(g)

§ 87(2)(b) stated that both Det. Persaud and Det. Montanez reached into his pockets. Det. Persaud stated that he did not recall if he did so. § 87(2)(g)

Allegation (H) Abuse of Authority: Detective Nandpaul Persaud threatened to arrest § 87(2)(b)

§ 87(2)(b) started that after the detectives frisked and searched him, Det. Montanez told § 87(2)(b) not to ride his bicycle on the sidewalk. § 87(2)(b) answered that he would not do so. Det. Persaud then told § 87(2)(b) not to ride his bike “around” Archer Avenue, or he would be arrested.

Det. Persaud and Det. Montanez both denied ever telling § 87(2)(b) that he could or would be arrested for riding a bicycle on the sidewalk or in the area.

NYC Administrative Code 19-176 (BR 08) states that no person shall ride a bicycle upon any sidewalk unless permitted by an official sign, and that a person who violates this subdivision may be issued a notice of violation and shall be liable for a civil penalty of not more than one hundred dollars.

§ 87(2)(g)

Allegation (I) Abuse of Authority: Detective Edwin Montanez failed to provide § 87(2)(b) with a business card.

Allegation (J) Abuse of Authority: Detective Nandpaol Persaud failed to provide § 87(2)(b) with a business card.

It is undisputed that neither Det. Montanez nor Det. Persaud provided § 87(2)(b) with a business card during this incident.

§ 87(2)(b) stated that after Det. Montanez and Det. Persaud searched him, they walked him back to his bicycle, where he saw other officers in unmarked vehicles. § 87(2)(b) then rode his bicycle away from the detectives.

Det. Montanez and Det. Persaud both stated that they did not provide § 87(2)(b) with a business card immediately after stopping and frisking § 87(2)(b) because their investigation was not yet concluded and he was not yet free to leave. The detectives explained that after stopping § 87(2)(b) on Van Wyck Expressway, they decided to return to his bicycle along the route he had taken while running from them so that they could inspect the area and determine if he had discarded a firearm. § 87(2)(b) was not free to go until the detectives canvassed for a possible discarded firearm, and they would have provided business cards after completing their investigation. However, upon returning to the area where § 87(2)(b) had dropped his bicycle, Det. Montanez and Det. Persaud received a point-to-point radio communication from other officers from their team, who stated that they needed immediate assistance in the area. Det. Montanez and Det. Persaud then left § 87(2)(b) and did not return to the area to look for a firearm. Because the detectives responded to other officers' call for assistance, they were unable to provide § 87(2)(b) with business cards.

The investigation did not obtain surveillance video capturing interactions occurring after Det. Montanez and Det. Persaud stopped § 87(2)(b) on Van Wyck Expressway.

NYPD AVL search results (records of the movements of NYPD vehicle in a particular area during a specific time frame) (BR 46) show other vehicles assigned to Narcotics Bureau Queens South in the vicinity of Van Wyck Expressway and Archer Avenue at the time of this incident.

§ 87(2)(g)

Det. Persaud's memo book (**BR 18**) does not include an entry for this incident (5:44 AM), and the next entry notes that there was an arrest at 6:25 AM § 87(2)(b) in Queens.

The 103rd Precinct Event Summary shows a larceny at 5:45 AM § 87(2)(b) in Queens, one mile from the incident location, but no other pertinent Event (**BR 21 page 40**). However, the investigation was unable to confirm whether this was the incident to which Det. Montanez and Det. Persaud reportedly responded.

NYC Administrative Code 14-174 (the Right to Know Act) (**BR 15**) states that officers must proactively offer business cards to civilians when civilians are stopped and not summonsed or arrested. However, officers are not required to comply with this standard when exigent circumstances require their immediate attention.

It is undisputed that § 87(2)(b) was stopped and not summonsed or arrested during this incident, and that he did not receive a business card from Det. Montanez or Det. Persaud. § 87(2)(g)

§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR 24).
- Det. Persaud has been a member of service for 11 years and has been a subject in five CCRB complaints and seven allegations, none of which were substantiated. § 87(2)(g)
- Det. Montanez has been a member of service for 10 years and has been a subject in seven CCRB complaints and 19 allegations, none of which were substantiated. § 87(2)(g)


Mediation, Civil, and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- As of August 2, 2023 the New York City Office of the Comptroller had no record of a Notice of Claim being filed in regard to this incident (BR 25).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

RPBP History

- This complaint did not contain any allegations of Racial Profiling/Bias-Based Policing.

Squad No.: 12

Investigator:  Inv. Madeleine Matz 09/28/2023

Signature Print Title & Name Date

Squad Leader: Samuel Ross IM Samuel Ross 10/02/2023

Signature Print Title & Name Date

Reviewer:

Signature Print Title & Name Date